ork Law Journal

Web address: http://www.nylj.com

NEW YORK, WEDNESDAY, JUNE 11, 1997

©1997 New York Law Publishing Co.

PRICE $3.00

Circuit Report on Bias Urges Court Reforms

Policies, Training Among Recommendations

BY DEBORAH PINES

A MASSIVE 2 ½-year examination of bias issues in federal courts in the Second Circuit has resulted in a draft report yesterday calling for more sensitivity training for judges, court employment anti-bias policies, and greater outreach to women and minority lawyers when making coveted court appointments such as those of special masters and trustees.

The 122-page report, from a nine-member committee dominated by judges, based its recommendations on a dizzying array of statistical and anecdotal findings and a commitment to root out conscious or unconscious forms of bias. "The most pernicious kind of bias consists in falsely supposing yourself to have none," the report states at the outset, quoting an English educator, Sir Walter Moberly.

Next week, the report and additional findings and recommendations by an advisory committee of lawyers will be submitted to the Second Circuit Judicial Council, the governing body of the Second Circuit courts, which requested such a report in 1993. The Council could act immediately on any of its recommendations or wait until the document is rewritten following a public comment period that ends Sept. 1.

One task force co-chair, Second Circuit Judge John M. Walker Jr., yesterday was optimistic the judicial council ultimately will act on at least some of the recommendations.

Judge Walker noted the task force was mindful of criticisms leveled against earlier bias reports from the D.C. Circuit and the California-based Ninth Circuit by judges and conservative politicians including U.S. Senator Charles E. Grassley, R-Iowa, who criticized the expense and methodology of the earlier projects.

But Judge Walker noted the Second Circuit task force focused on bias issues it can reasonably address and not topics such as bias in law firms or presidential appointments. He also noted the Second Circuit report, which mostly stemmed from the work of hundreds of volunteer lawyers, cost less than $250,000 in public money, most of which was spent on survey, polling, travel and printing expenses and the costs of public hearings.

Another task force co-chair, South-

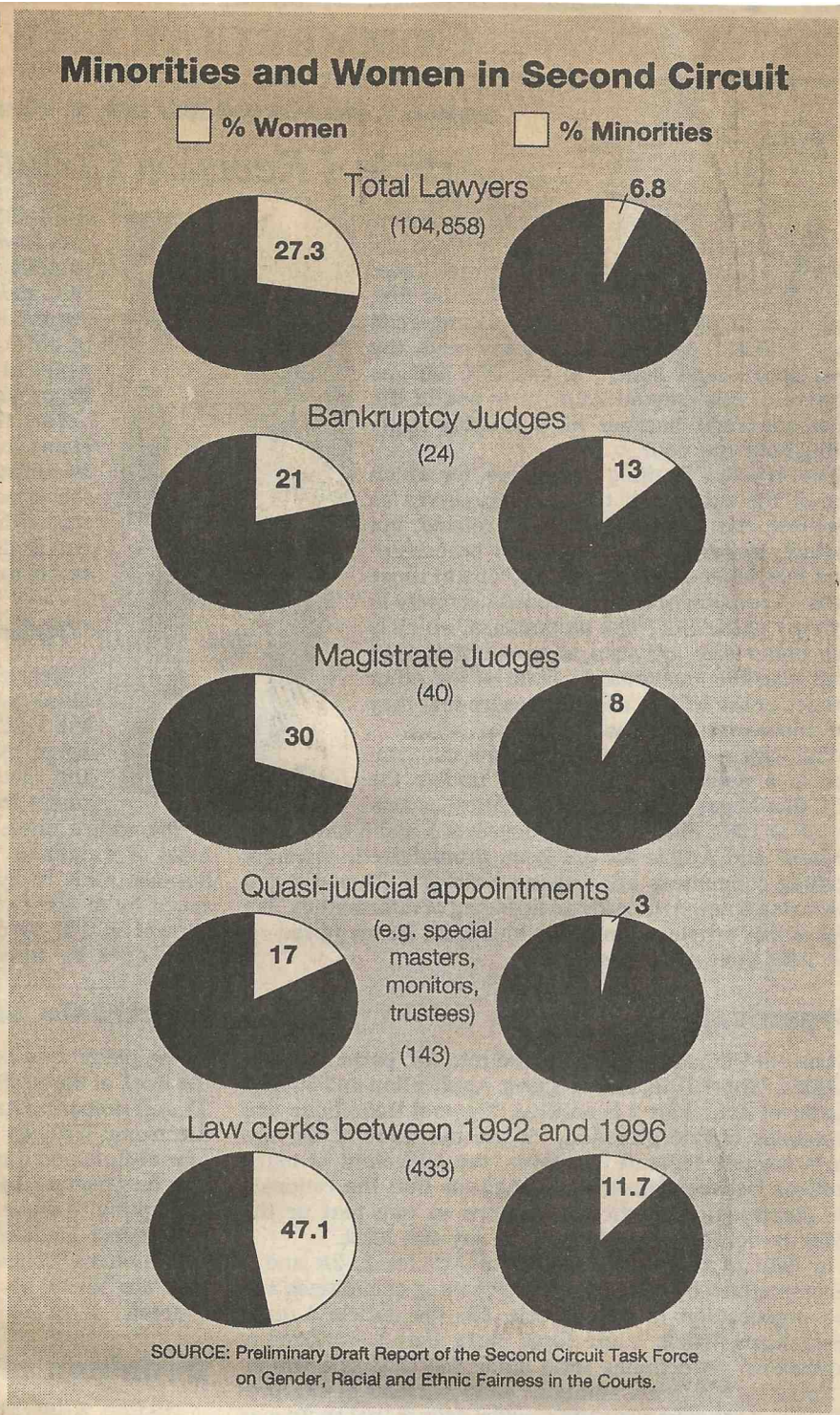
SECOND CIRCUIT APPOINTMENTS OF WOMEN, MINORITIES — PAGE 4

Continued on page 4, column 5

LEGAL NYLJ LINKS For the full text of the Preliminary Draft Report of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, link to: **http://www.nylj.com**

Bias Task Force Recommendations

- Increase judges' awareness and understanding of bias
- Consider formalizing processes for appointment of quasi-judicial officers such as special masters and trustees
- Provide wider notice of openings for bankruptcy and magistrate judges, law clerks, Criminal Justice Act panelists and bench-bar committee members
- Encourage more women and minority appointment panel members
- Increase diversity in Second Circuit Judicial Conference guest lists and bar group subsidies for needy invitees



SOURCE: Preliminary Draft Report of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts.

2d Circuit Report on Bias Issued

Continued from page 1, column 6

ern District Magistrate Judge Sharon E. Grubin, said assembling the report has had salutary effects. "Interviewing people has already made people aware of problems they weren't aware of before and started the process rolling," she said.

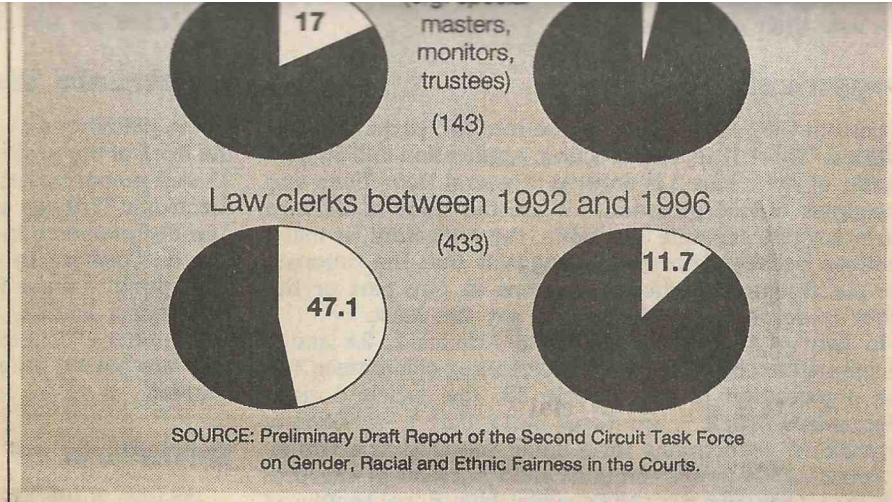
Key findings in the Second Circuit report include:

• Differing perceptions of bias among 614 lawyers interviewed. As one example, while 10.4 percent of white male lawyers reported observing gender bias against lawyers by judges, 35.8 percent of white female lawyers, 30.5 percent of minority male lawyers and 47.2 percent of minority female lawyers reported having witfavoring and exhibiting impatience with employment discrimination cases.

• Findings that the circuit's member courts generally lack anti-bias and anti-harassment policies.

The task force draft report followed calls for studies of bias by the U.S. Judicial Conference, the federal courts' governing body, in 1992 and by Congress two years later. It was carried out by a massive volunteer effort in the circuit, which includes federal courts in New York, Vermont and Connecticut (*NYLJ*, Sept. 19, 1995).

The effort, hampered by delays, involved public hearings, surveys of thousands of judges, lawyers, jurors and court employees, and the drafting of separate committee reports on gen-



SOURCE: Preliminary Draft Report of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts.

2d Circuit Report on Bias Issued

Continued from page 1, column 6

ern District Magistrate Judge Sharon E. Grubin, said assembling the report has had salutary effects. "Interviewing people has already made people aware of problems they weren't aware of before and started the process rolling," she said.

Key findings in the Second Circuit report include:

- Differing perceptions of bias among 614 lawyers interviewed. As one example, while 10.4 percent of white male lawyers reported observing gender bias against lawyers by judges, 35.8 percent of white female lawyers, 30.5 percent of minority male lawyers and 47.2 percent of minority female lawyers reported having witnessed such bias.
- Underrepresentation of women and minorities in quasi-judicial posts, including special masters, trustees and receivers. While women constitute at least 27 percent and minorities at least 6.8 percent of the Second Circuit's lawyers, white men received 80 percent of such appointments since 1992.
- Growing numbers of women and minority law clerks and magistrate judges circuit-wide, although percentages are are not uniform among the circuit's courts. Of 433 law clerks, hired since 1992, 47.1 percent were women and 11.7 percent were minorities. Of 40 Second Circuit magistrate judges, 12, or 30 percent, are women, and three or 8 percent are minorities.
- Reports by lawyers of judges disfavoring and exhibiting impatience with employment discrimination cases.
- Findings that the circuit's member courts generally lack anti-bias and anti-harassment policies.

The task force draft report followed calls for studies of bias by the U.S. Judicial Conference, the federal courts' governing body, in 1992 and by Congress two years later. It was carried out by a massive volunteer effort in the circuit, which includes federal courts in New York, Vermont and Connecticut (*NYLJ*, Sept. 19, 1995).

The effort, hampered by delays, involved public hearings, surveys of thousands of judges, lawyers, jurors and court employees, and the drafting of separate committee reports on gender bias and racial and ethnic bias (*NYLJ*, Feb. 25).

Yesterday's report is shorter than the advisory committee reports, which are expected to be released later this week, due to interests in brevity and avoiding certain controversial issues addressed by the advisory committee. Those include reviews of possible bias in case outcomes and in presidential appointments.

In addition to Judges Walker and Grubin other task force members were Western District Judge John T. Curtin, Eastern District Judge Sterling Johnson Jr., Southern District Judges Constance Baker Motley and Sonia Sotomayor, and three lawyers who participated in earlier bias studies in the state courts: Ellen Mercer Fallon, Fern Schair and Sue Ann Shay.